



Human Rights Council
Working Group on the Universal Periodic Review
Thirty-fourth session
4–15 November 2019

Compilation on San Marino

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a compilation of information contained in reports of treaty bodies and special procedures and other relevant United Nations documents, presented in a summarized manner owing to word-limit constraints.

II. Scope of international obligations and cooperation with international human rights mechanisms and bodies^{1, 2}

2. The Human Rights Committee welcomed the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in 2015 and the declaration made by San Marino on 4 August 2015, under article 41 of the International Covenant on Civil and Political Rights, recognizing the competence of the Committee to receive and consider inter-State communications.³

3. The Human Rights Committee requested that San Marino include in its next periodic report, which should be submitted in 2022, specific up-to-date information on the implementation of all its recommendations and of the Covenant as a whole.⁴

4. The Office of the United Nations High Commissioner for Refugees (UNHCR) recommended that the Government of San Marino accede to the Convention relating to the Status of Refugees and its Protocol.⁵

5. UNHCR recommended that the Government of San Marino accede to the Convention relating to the Status of Stateless Persons and to the Convention on the Reduction of Statelessness.⁶

6. The United Nations Educational, Scientific and Cultural Organization (UNESCO) recommended that San Marino ratify the Convention against Discrimination in Education, the Convention for the Safeguarding of the Intangible Cultural Heritage and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and that it submit more regular periodic reports on the implementation of UNESCO instruments.⁷



III. National human rights framework⁸

7. While acknowledging the existence of institutional structures that monitored the implementation of human rights, such as the Equal Opportunities Commission, the Human Rights Committee was concerned that San Marino had not yet established a consolidated national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It recommended that San Marino establish an effective and independent national human rights institution with broad competence in the field of human rights, in accordance with the Paris Principles.⁹

8. The Regional Office for Europe of the Office of the United Nations High Commissioner for Human Rights (OHCHR) made similar recommendations and noted that San Marino did not have an ombudsperson.¹⁰

IV. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues

Equality and non-discrimination¹¹

9. While taking note of the existing legal provisions against discrimination, the Human Rights Committee was concerned that San Marino had not yet adopted comprehensive anti-discrimination legislation and that articles 90 and 179 bis of the Criminal Code relating to discrimination only referred to discrimination based on racial, ethnic, national, religious and sexual orientation grounds and not other grounds for discrimination, such as gender identity. The Committee recommended that San Marino take the measures necessary to strengthen its legal framework against discrimination, in particular by enacting comprehensive anti-discrimination legislation covering all grounds for discrimination, including gender identity.¹² It further recommended that San Marino make vigorous efforts to raise awareness among the general public and train judges and lawyers on the existing criminal provisions against discrimination.¹³

10. The OHCHR Regional Office for Europe made similar observations and noted that, in 2017, the European Commission against Racism and Intolerance had found that San Marino had no criminal legislation prohibiting discrimination on the grounds of language or colour, nor did it have comprehensive civil and administrative legislation against racial discrimination or an independent body to combat racism, xenophobia, anti-Semitism and intolerance at the national level.¹⁴

11. The OHCHR Regional Office for Europe noted with concern that same-sex couples did not have the right to adopt children, marry or obtain another form of legal recognition of their relationships in San Marino.¹⁵

B. Civil and political rights

1. Administration of justice, including impunity, and the rule of law¹⁶

12. While taking note of decision No. 20/2013 of the Congress of State setting up a working group to draft the new code of criminal procedure, the Human Rights Committee noted that the working group had not yet completed its mandate. Recalling its previous recommendation (CCPR/C/SMR/CO/2, para. 11), the Committee recommended that San Marino speed up the adoption of a new comprehensive code of criminal procedure and ensure its full compliance with the International Covenant on Civil and Political Rights.¹⁷

13. The OHCHR Regional Office for Europe noted the measures taken by San Marino to tackle corruption in the country, following several high-profile scandals.¹⁸

2. Fundamental freedoms¹⁹

14. UNESCO noted that articles 183 to 185 of the Criminal Code criminalized defamation, and that offending or threatening the State, the Captains Regent or other public officials was punishable with imprisonment of up to five years.²⁰

15. The Human Rights Committee took note of the information provided by San Marino on case law relating to defamation and honour, in particular on the ruling by the Judge of Appeal of 3 November 2009 that criticism of the public activities of politicians, even if offensive, could never constitute an offence to the principle or the honour of the individual. Nevertheless, the Committee regretted that articles 183 to 185, 342 and 344 of the Criminal Code still criminalized defamation and other offences against honour, including the honour of the Captains Regent and other public officials.²¹

16. In the light of article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, the Committee recommended that San Marino consider decriminalizing the conduct provided for in articles 183 to 185, 342 and 344 of the Criminal Code and, in any case, restrict the application of criminal law to the most serious cases, bearing in mind that imprisonment was never an appropriate punishment in such cases.²² UNESCO recommended that San Marino decriminalize defamation and insult and place them within a civil code in accordance with international standards.²³

17. UNESCO noted that a freedom of information law did not currently exist in the country and encouraged San Marino to introduce such a law, in accordance with international standards.²⁴

C. Economic, social and cultural rights

1. Right to health

18. The Human Rights Committee noted with concern that the voluntary termination of pregnancy was an offence under the Criminal Code, reportedly leading women to seek abortions abroad, which could put their life and health at risk. While noting the information from San Marino that a "state of necessity" was provided for in article 42 of the Criminal Code as a justification exempting from punishment anyone forced to commit an offence in order to protect himself or herself or others from the risk of serious personal harm, the Committee was concerned that no exceptions to the general legal ban on abortion were explicitly recognized in the Criminal Code.²⁵

19. The Human Rights Committee urged San Marino to amend its legislation with a view to explicitly providing for exceptions to the general legal ban on abortion, including for therapeutic purposes and when the pregnancy was the result of rape or incest. It also urged San Marino to ensure access to education and awareness-raising programmes focusing on the importance of contraception and of sexual and reproductive health rights.²⁶

20. The OHCHR Regional Office for Europe noted that abortion remained illegal under most circumstances in San Marino. In 2017, a popular initiative to legalize abortion had triggered strong divisions between the centre-left Government and the conservative opposition, which had drawn support from Catholic movements.²⁷

2. Right to education²⁸

21. UNESCO noted that the law of 10 January 1974 guaranteed that preschool education, covering the ages of 3 to 6 years, was free of charge. However, enrolment remained optional (art. 1), contrary to the recommendations of the Education 2030 Framework for Action, which encouraged States to adopt at least one year of free and compulsory pre-primary education.²⁹

22. UNESCO recommended that San Marino gradually extend compulsory education to at least one year of preprimary education, and that it share with UNESCO all relevant information for updating the country profile of the UNESCO Observatory on the Right to Education.³⁰

23. UNESCO noted that San Marino had not submitted its national report on the implementation of the 1974 Recommendation on the Status of Scientific Researchers for the second consultation covering the period from 2013 to 2016.³¹

24. UNESCO encouraged San Marino to report to it in future on the implementation of the Recommendation on Science and Scientific Researchers, which had superseded the 1974 Recommendation in 2017, paying particular attention to the legal provisions and regulatory frameworks under which human rights were guaranteed for scientific researchers, to human rights obligations related to science, to the principle of non-discrimination – including by actively encouraging women and girls to pursue scientific careers – and to the rights of scientists to autonomy and freedom of research, expression and publication.³²

D. Rights of specific persons or groups

1. Women³³

25. The Human Rights Committee recommended that San Marino intensify its efforts to eliminate gender stereotypes on the role and responsibilities of men and women in the family and society.³⁴ It noted that the representation of women in political life remained weak, despite measures taken to remedy the situation, such as the adoption of Qualified Law No. 1/2008, which provided that each party list of candidates running for general elections should not include more than two thirds of candidates of the same gender. In that respect, the Committee noted with concern that only 10 of the 60 members of the Great and General Council and one of the nine Secretaries of State were women. It recommended that San Marino strengthen its efforts to increase the representation of women in political life, particularly in the Great and General Council and at the highest levels of the Government, if necessary, through the adoption of appropriate temporary special measures to give effect to the provisions of the International Covenant on Civil and Political Rights.³⁵

26. The Human Rights Committee welcomed the adoption of Law No. 97 of 20 June 2008 on the prevention and elimination of violence against women and gender violence and the establishment of the Authority for Equal Opportunities. It recommended that San Marino continue making efforts to prevent and combat all forms of gender-based violence, in particular violence against women, namely by ensuring that sufficient resources were allocated to the competent institutions.³⁶

2. Children³⁷

27. The Human Rights Committee welcomed the legislative steps taken by San Marino to protect human rights, including the adoption of Law No. 140 of 4 September 2014, which provided that children were entitled to protection and security and should not be subject to corporal punishment or other treatment damaging their physical and psychological integrity.³⁸

28. While noting that mandatory recruitment to the military had never occurred and that a working group had recently been set up to review legislation relating to the military corps, the Human Rights Committee remained concerned that, while only applicable in the exceptional circumstance of general mobilization, article 3 of Law No. 15/1990, which provided for mandatory military service including for minors from the age of 16 years, remained in force. It recommended that San Marino speed up the revision of its legislation relating to the military corps and ensure that it was in full conformity with the International Covenant on Civil and Political Rights and relevant international human rights standards, including by raising the minimum age for military service in all circumstances to 18 years.³⁹

3. Persons with disabilities⁴⁰

29. The Human Rights Committee welcomed the adoption of the Framework Law (No. 28) of 10 March 2015 on assistance to and the social inclusion and rights of persons with disabilities.⁴¹

30. The Human Rights Committee noted with concern that article 2 of the Electoral Law (No. 6/1996), as amended in 2007, excluded “persons interdicted for mental infirmity” from voting. It recommended that San Marino revise its legislation to ensure that it did not discriminate against persons with mental, intellectual or psychosocial disabilities by denying them the right to vote on bases that had no reasonable and objective relationship to their ability to vote.⁴²

31. The OHCHR Regional Office for Europe noted that, in March 2015, San Marino had adopted a Framework Law on assistance to and the social inclusion and rights of persons with disabilities. The law contained many provisions pertaining to autonomy and inclusion, accessibility, awareness-raising and participation in political, public and cultural life, and established a San Marinense Commission for the Implementation of the Convention on the Rights of Persons with Disabilities. As the Regional Office also stated, the Commissioner for Human Rights of the Council of Europe had noted in 2015 that legislation in San Marino continued to provide for the withdrawal of legal capacity of persons with disabilities, contrary to article 12 of the Convention. In addition, the initial report of San Marino to the Committee on the Rights of Persons with Disabilities had been overdue since 2010.⁴³

4. Migrants, refugees and asylum seekers⁴⁴

32. UNHCR noted that accession to the Convention relating to the Status of Refugees and the establishment of a national legal and institutional framework would lay the ground for the Government of San Marino to provide refugees with international protection. It would also be a key step in line with the recently adopted global compact on refugees, which San Marino had supported. Accession to the Convention would allow San Marino to fully comply with its obligations under the international human rights treaties to which it was a party, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (especially article 3 regarding non-refoulement), the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child (especially article 22 regarding refugee children). For example, a national asylum procedure could help ensure that gender-related claims were properly considered and that a child-sensitive interpretation of the refugee definition was applied.⁴⁵

33. UNHCR recommended that the Government of San Marino establish a gender- and age-sensitive refugee status determination procedure.⁴⁶

34. The OHCHR Regional Office for Europe noted that approximately 18 per cent of the population of San Marino consisted of non-citizens, who did not have political rights. Long-term foreign residents in San Marino who did not wish to renounce their nationality did not have access to San Marinense citizenship through naturalization. In addition, naturalization criteria were strict, as it was required to live in the country for a minimum of 30 years to obtain citizenship.⁴⁷

35. The OHCHR Regional Office for Europe also noted that the European Commission against Racism and Intolerance and the Commissioner for Human Rights of the Council of Europe had expressed concern over the vulnerable situation of female migrant domestic workers, which was due to the fact that they mostly lived with their employers.⁴⁸

5. Stateless persons

36. UNHCR noted that San Marino was neither a State party to the Convention relating to the Status of Stateless Persons nor a State party to the Convention on the Reduction of Statelessness. It stated that those two Conventions were key international treaties designed to ensure that every person enjoyed the right to a nationality and that stateless people enjoyed a basic set of human rights. The statelessness conventions did not stand alone, but complemented a much broader range of international legal standards, in particular those contained in human rights treaties to which San Marino was a party.⁴⁹

Notes

- ¹ Tables containing information on the scope of international obligations and cooperation with international human rights mechanisms and bodies for San Marino will be available at www.ohchr.org/EN/HRBodies/UPR/Pages/SMindex.aspx.
 - ² For relevant recommendations, see A/HRC/28/9, paras. 78.1–78.16, 78.21–78.24, 79.1–79.6 and 80.1–80.8.
 - ³ CCPR/C/SMR/CO/3, paras. 4–5.
 - ⁴ *Ibid.*, para. 26.
 - ⁵ UNHCR submission for the universal periodic review of San Marino, p. 2.
 - ⁶ *Ibid.*
 - ⁷ UNESCO submission for the universal periodic review of San Marino, pp. 4–5.
 - ⁸ For relevant recommendations, see A/HRC/28/9, paras. 78.17, 78.19 and 80.9–80.10.
 - ⁹ CCPR/C/SMR/CO/3, paras. 6–7.
 - ¹⁰ OHCHR Regional Office for Europe submission for the universal periodic review of San Marino, p. 1.
 - ¹¹ For relevant recommendations, see A/HRC/28/9, paras. 78.18, 78.20, 78.25–78.30, 78.38, 79.7–79.11 and 80.11.
 - ¹² CCPR/C/SMR/CO/3, paras. 8–9.
 - ¹³ *Ibid.*, para. 9.
 - ¹⁴ OHCHR Regional Office for Europe submission, p. 1.
 - ¹⁵ *Ibid.*, p. 2.
 - ¹⁶ For the relevant recommendation, see A/HRC/28/9, para. 78.36.
 - ¹⁷ CCPR/C/SMR/CO/3, paras. 16–17.
 - ¹⁸ OHCHR Regional Office for Europe submission, p. 1.
 - ¹⁹ For relevant recommendations, see A/HRC/28/9, paras. 79.12–79.13 and 79.15.
 - ²⁰ UNESCO submission, p. 3.
 - ²¹ CCPR/C/SMR/CO/3, para. 18.
 - ²² *Ibid.*, para. 19.
 - ²³ UNESCO submission, p. 4.
 - ²⁴ *Ibid.*, pp. 3–4.
 - ²⁵ CCPR/C/SMR/CO/3, para. 14.
 - ²⁶ *Ibid.*, para. 15.
 - ²⁷ OHCHR Regional Office for Europe submission, p. 1.
 - ²⁸ For the relevant recommendation, see A/HRC/28/9, para. 78.43.
 - ²⁹ UNESCO submission, pp. 3–4.
 - ³⁰ *Ibid.*, p. 4.
 - ³¹ *Ibid.*, p. 5.
 - ³² *Ibid.*
 - ³³ For relevant recommendations, see A/HRC/28/9, paras. 78.31–78.33, 79.13–79.14 and 79.16.
 - ³⁴ CCPR/C/SMR/CO/3, para. 11.
 - ³⁵ *Ibid.*, paras. 10–11.
 - ³⁶ *Ibid.*, paras. 12–13.
 - ³⁷ For relevant recommendations, see A/HRC/28/9, paras. 78.34–78.35 and 78.37.
 - ³⁸ CCPR/C/SMR/CO/3, para. 3.
 - ³⁹ *Ibid.*, paras. 20–21.
 - ⁴⁰ For relevant recommendations, see A/HRC/28/9, paras. 78.39–78.42 and 78.44–78.45.
 - ⁴¹ CCPR/C/SMR/CO/3, para. 3.
 - ⁴² *Ibid.*, paras. 22–23.
 - ⁴³ OHCHR Regional Office for Europe submission, p. 2.
 - ⁴⁴ For the relevant recommendation, see A/HRC/28/9, para. 78.46.
 - ⁴⁵ UNHCR submission, p. 1.
 - ⁴⁶ *Ibid.*, p. 2.
 - ⁴⁷ OHCHR Regional Office for Europe submission, p. 2.
 - ⁴⁸ *Ibid.*
 - ⁴⁹ UNHCR submission, p. 2.
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